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OHIO

TO BE SENT DIRECTLY TO THE

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

FILED
Criminal Division

DEC 2 2005

STATE OF OHIO,

:

Plaintiff, :

HAMILTON COUNTY
GREGORY HARTMANN
CLERK OF COURTS

Vs. :

Case No. B-9309022

C-050840

S

JAMES DERRICK O'NEAL :

Defendant. :

COMPLETE TRANSCRIPT OF PROCEEDINGS

FILED
COURT OF APPEALS

DEC - 2 2005

Judith A. Mullen, Esq.
Phillip R. Cummings, Esq.GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY

On behalf of the Plaintiff

John J. Gideon, Esq.
Michael W. Krumholtz, Esq.

On behalf of the Plaintiff.

BE IT REMEMBERED that upon the
motion of this cause, on May 17th, 2005, before
the Honorable MARK R. SCHWEIKERT, Judge of the
said Court of Common Pleas, the following
proceedings were had.

HAMILTON COUNTY
CLERK OF COURTSBOUND DOCUMENT
CANNOT BE SCANNED

268

STATE OF OHIO
VERSUS
JAMES DERRICK O'NEAL
Case No. B-9309022
Case No. C-050840

I N D E X

DEFENDANT'S WITNESSES

Dr. Robert G. Tureen

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Cross-examinationPage 36, Line 16
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E X H I B I T S

STATE'S EXHIBITS

Exhibit No. 1, Dr. Nelson's report

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Exhibit No. 2, CV, Dr. W. Michael Nelson, III

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Exhibit No. 3, O'Neal medical Chart

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Exhibit No. 4, ODRC Mental Health file, O'Neal

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Exhibit No. 5, O'Neal Ohio Supreme Court decision

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Defendant's Exhibits:

Exhibit A, O'Neal school records

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Exhibit B, July 27, 1994 report

Marked for identification By counsel
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Exhibit C, Tureen Report

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ALL OF THE EXHIBITS IN THE ABOVE CAUSE
ARE IN THE CUSTODY OF THE EXHIBIT CLERK.

1 MORNING SESSION, MAY 17, 2005

2 P-r-o-c-e-e-d-i-n-g-s

3 THE COURT: Let's go on record on
4 this. This is State of Ohio v. James
5 Derrick O'Neal. The defendant is not
6 present yet. He is on his way.

7 Maybe we should wait until he gets
8 here. We will do that.

9 MS. MULLEN: Your Honor, when the
10 defendant arrives, I would like to read
11 into the record the agreed stipulations
12 between the parties.

13 THE COURT: That's kind of where I
14 was going.

15 MS. MULLEN: I'm sorry.

16 THE COURT: I thought we had better
17 wait until he gets here.

18 MS. MULLEN: Yes.

19 (Pause in proceedings.)

20 THE COURT: Okay. Let's call State
21 of Ohio v. James O'Neal, Case Number
22 B9309022. Let the record reflect that the
23 defendant is present in court with his
24 counsel.

25 This matter is on today for a hearing

1 regarding the defendant's post-conviction
2 petition requesting a determination under
3 the Supreme Court case of *Atkins v.*
4 *Virginia*, that he is a mentally retarded
5 offender not subject to the death penalty.

6 The Court has previously ordered, at
7 the request of the parties, psychological
8 evaluations, and those reports have been
9 received. I have not reviewed these
10 reports. I did that on purpose because I
11 wasn't sure whether these were technically
12 the defense's evaluation, whether you were
13 going to offer them or not, and so although
14 I have them, but I haven't reviewed them.

15 Correct me if I am wrong, but I
16 believe that the defense has the burden in
17 this situation, so you would proceed first.

18 MR. KRUMHOLTZ: We have the
19 obligation in going forward.

20 Your Honor, we could call Dr. Tureen.

21 I think Ms. Mullen will be discussing
22 some stipulations that the Court may want
23 to have read for the record.

24 MS. MULLEN: The parties have agreed
25 to stipulate to the admissibility of all of

1 the doctors' reports, to Dr. Nelson's CV,
2 to Mr. O'Neal's medical chart, Mr. O'Neal's
3 mental health file, to the entire trial
4 record and transcripts, and to Mr. O'Neal's
5 school records.

6 MR. KRUMHOLTZ: That's correct,

7 THE COURT: What was final one?

8 MS. MULLEN: The school records.

9 THE COURT: And the defense accepts
10 all of those stipulations.

11 MR. KRUMHOLTZ: That's right, your
12 Honor. And with those stipulations, we
13 would call Dr. Tureen.

14 ROBERT TUREEN, Ph.D.

15 being first duly sworn, was examined and testified
16 as follows:

17 THE COURT: Good morning, doctor.

18 THE WITNESS: Good morning.

19 DIRECT EXAMINATION

20 BY MR. KRUMHOLTZ:

21 Q. Sir, please give us your full name.

22 A. Robert Tureen.

23 Q. What is your current professional
24 address?

25 A. Mayfield Clinic, 506 Oak Street,

1 Cincinnati.

2 Q. How are you currently employed?

3 A. I'm an associate of the Mayfield
4 Clinic?

5 Q. What is the Mayfield Clinic, Dr.
6 Tureen.

7 A. It's a group of private
8 practitioners, including 15 neurosurgeons and
9 myself.

10 Q. What is your professional area?

11 A. I'm a clinical psychologist with a
12 specialist in neuropsychology.

13 Q. Are you licensed as a psychologist in
14 the state of Ohio?

15 A. Yes.

16 Q. How long have you been licensed in
17 this state, sir?

18 A. Since '73 or '74, whenever the
19 licensure went through.

20 Q. Doctor, is there such a thing as
21 board certification for psychologists?

22 A. Yes.

23 Q. Please explain what board
24 certification is in the case of a psychologist.

25 A. There are several specialty areas in

1 which people are board certified in psychology by
2 the American Board of Professional Psychologists.
3 And this is a recognition via testing and
4 accomplishment of our peers that you have reached
5 a certain state of expertise in your area. I'm a
6 diplomate with the American Board of Clinical
7 Neuropsychologists, and that was granted in 1986.

8 Q. When you say you're a diplomate,
9 does that mean you have attained board
10 certification?

11 A. Yes, it does.

12 Q. How long have you been with the
13 Mayfield Clinic?

14 A. Seven years

15 Q. How long have you been in the private
16 practice of psychology, doctor?

17 A. Well, I would consider my tenure with
18 the Mayfield Clinic being in private practice of
19 psychology.

20 Q. If you would, please describe for us
21 your undergraduate educational background in
22 college.

23 A. I received my bachelor degree from
24 the University of Michigan, and I majored in
25 psychology there. Then I obtained my master's

1 degree from Akron State, which is now Akron State
2 University, and then went onto Wayne State
3 University in Detroit to obtain my Ph.D. I did a
4 clinical internship at LaFayette Clinic in
5 Detroit, which no longer exists. I did a two-year
6 postdoctoral fellowship at the University of
7 Oklahoma Medical Center.

8 Q. Dr. Tureen, what is neuropsychology?

9 A. That is a branch of psychology which
10 specializes in evaluating and treating the
11 behavioral reactions of changes in the brain
12 function or disordered brain function.

13 Q. If you would, please describe for the
14 Court the nature of your practice of psychology as
15 it exists today.

16 A. As it exist today, I'm doing almost
17 exclusive evaluation of individuals who are either
18 known to have impaired brain function or thought
19 to have impaired brain function.

20 Q. Have you had any experience in your
21 practice of psychology in evaluating people to
22 determine whether or not they are mentally
23 retarded?

24 A. Yes, that's pretty much run through
25 the practice over the years.

1 Q. If you would generally, please
2 describe your experience in evaluating people on
3 this issue of mental retardation for the Court.

4 A. The basic approach is to use a
5 battery of tests to establish a level of
6 intellectual functioning. We further try to
7 understand where that mental retardation might be
8 stemming from. For instance, is it coming from
9 longstanding brain damage? A learning disorder
10 that may be the result of brain damage? And we
11 may or may not look at school records. I don't
12 work with children that much -- I don't work with
13 children at all. Excuse me. I work with adults,
14 so it's hard to get hold of school records
15 frequently. But if you can, that's also helpful
16 in establishing when the retardation in and of
17 itself occurred. Then you look at the functional
18 activity, how the person functions on a day-to-day
19 basis.

20 Q. Doctor, setting aside this particular
21 gentleman, James O'Neal, setting him aside, what
22 kind of experience -- how many cases have you been
23 involved in evaluating people as to whether or not
24 they are mentally retarded?

25 A. We are talking hundreds. I can't

1 give you a specific number. And by terms of
2 mentally retardation, we are talking about the
3 problems beginning early on before the age of 18
4 and not acquired as an adult.

5 Q. Have you ever been qualified as
6 expert witness in giving testimony in the Hamilton
7 County Court of Common Pleas?

8 A. Yes, I have.

9 Q. Can you give us an estimate as to the
10 number of times in which you have qualified as an
11 expert in giving testimony in Hamilton County
12 Common Pleas Court?

13 A. Probably a dozen times.

14 Q. Let me discuss some work with you
15 that you have performed in this particular case
16 involving Mr. O'Neal. First, of all as it relates
17 to your testimony today, when you were first
18 contacted and asked to conduct an evaluation in
19 this matter pertaining to the question of whether
20 or not James O'Neal is mentally retarded?

21 A. It was I think around August of 2004.

22 Q. Prior to that initial contact on this
23 issue of mental retardation, had you had any
24 involvement with James O'Neal?

25 A. Yes, I did.

1 Q. If you would, describe for the Court
2 what that involvement consisted of?

3 A. Back in 1994 at the time of the
4 initial trial, I was called in by another
5 psychologist who was involved in the evaluation of
6 Mr. O'Neal. The basis for being called is that
7 that psychologist was concerned that there was
8 evidence in his evaluation to suggest that there
9 was some brain disorder, brain damage, if you
10 will, exhibited by Mr. O'Neal. And therefore, as
11 an expert in that area, I was asked to come in and
12 evaluate Mr. O'Neal.

13 Q. In your work involving Mr. O'Neal
14 back at that time, 1994, did you conduct any type
15 of interview with Mr. O'Neal?

16 A. Yes, I did.

17 Q. Did you conduct any testing of Mr.
18 O'Neal back at that time?

19 A. Yes, I specifically used a battery of
20 tests to look at the possibility of symptoms of
21 brain damage or brain dysfunction. He had already
22 had some testing by Dr. Chiappone, who had seen
23 him previously.

24 Q. With regard to the testing that you
25 did relating to Mr. O'Neal in 1994, please

1 indicate for the Court what testing that you did
2 and what the results of those tests were. And if
3 it helps to refer to your earlier report, please
4 feel free to do that, Doctor.

5 A. I administered him a test with a
6 screening battery of various types of mental
7 function, including memory and language and what
8 we refer to as spacial relations.

9 There are also two measures of which
10 are particularly important, which reference what
11 we call executive functioning. That is the
12 ability to take information in, process that
13 information, plan, decide, and effectively carry
14 out a plan of action to achieve a goal. Even more
15 importantly, to be able to shift one's way of
16 thinking or a person's focus when there is a
17 change in the environment. The environment is
18 changing. Our brain is constantly making
19 adjustments to the environment and evaluating
20 feedback information.

21 That was particularly important in
22 this instance, because Mr. O'Neal showed an
23 incredible amount of rigidity in thinking. He
24 became very perseverative. And what I gave him
25 stuck in his head. No matter whatever the

1 information may be, that this is not an
2 appropriate response as we are testing him, he was
3 unable to make the change. He was unable to test
4 out alternative hypotheses that we were using in
5 the field.

6 Q. Was there any other testing that you
7 performed on Mr. O'Neal back at that time?

8 A. Yes, that was the Wisconsin Card
9 Sort. That was the test that I used to evaluate
10 that particular aspect; the Porteus Mazes.

11 I also did some -- administered the
12 Rey Figure -- that's R-e-y -- which is a spacial
13 planning process, which is very sensitive to the
14 existence of brain disturbance.

15 The Hooper Visual Organization Test,
16 again, is a measure which assesses the ability to
17 visually organize spacial stimuli and to recognize
18 objects, and the inability to do that reflects
19 some disturbance in the basic brain processing and
20 basic abilities as we would normally assess them.

21 Where his strengths were was mostly
22 in his verbal expression in language.

23 Q. Now, have we covered, Doctor, not
24 only the tests you administered back in '94, but
25 the results of those tests from your standpoint as

1 a psychologist?

2 A. Well, I concluded that he was in the
3 borderline to mildly retarded level of retarded
4 function as reflected by previously psychometric
5 measures, that the current testing reflecting he
6 had evidence of impaired higher cortical
7 functions. That means brain function, such as the
8 ability to reason abstractly, problem solve, and
9 plan while other functions remain well intact such
10 as language.

11 Q. You mentioned testing you performed
12 on Mr. O'Neal back in 1994, did you personally
13 take Mr. O'Neal through an IQ test back at any
14 time in '94?

15 A. At that time, no.

16 Q. Did you review the results of IQ test
17 that had been administered to O'Neal back at that
18 time?

19 A. I did.

20 Q. Who performed that IQ test?

21 A. Dr. Chiappone.

22 Q. Let me take you from 1994 to 2004.
23 Regarding your work in 2004 in connection with the
24 issue of whether or not Mr. O'Neal is mentally
25 retarded, can you describe in general terms for

1 the Court the work that you have performed?

2 A. Yes. Besides again interviewing Mr.
3 O'Neal -- and this is on December 4th of 2004 -- I
4 chose to administer two IQ measures. Now, the
5 Weschsler, W-e-s-c-h-s-l-e-r, Adult Intelligent
6 Scale 3 is the upgraded version of test that Dr.
7 Chiappone used in 1994.

8 Typically, when a new test is brought
9 out, or a new version of a test is brought out, it
10 has been cleaned up. Items which were not
11 important before and which did not show to be
12 discriminatory are dropped. New forms are
13 established. It's considered to be a more
14 accurate measure at this point, so I administered
15 that test.

16 I also wanted a backup measure just
17 to see, you know, to be, if you will, twice
18 assured of what I was getting, so I administered
19 the Reynolds Intelligence Test. That is not near
20 as popular a test. It's a relatively new test,
21 but it also assesses some of the same types of
22 abilities, but it does so in a different manner.

23 Q. Doctor, in addition to this testing,
24 have you reviewed any records pertaining to Mr.
25 O'Neal in connection with your evaluation on the

1 issue of whether or not he is mentally retarded?

2 A. Yes, I have.

3 Q. In general, can you tell what records
4 you have reviewed?

5 A. Probably the most important one was
6 the psychological evaluation or educational
7 evaluation performed back when he was in grade six
8 at age 14. I don't have the date on that.

9 Q. Let me stop you for a second and
10 approach if I may. Let me hand you what's been
11 marked as Defendant's Exhibit A. I will give you
12 a chance to look at that.

13 A. Yes.

14 Q. Do you recognize that, sir?

15 A. Yes, that's a copy of the school
16 records from the Cincinnati Public Schools'
17 psychology service.

18 Q. Are those records that you have
19 reviewed in connection with your evaluation of
20 whether or not James O'Neal is mentally retarded?

21 A. Yes.

22 Q. Are those records significant in any
23 way in assisting you with making that
24 determination?

25 A. Yes. This occurred when he was, as I

1 said before, when he was in Grade 6 at age 14.
2 The date I believe was 1968. He was administered
3 the wechsler Adult Intelligence Scale for
4 Children, which is, if you will, a downward
5 version of the wechsler scale for adults. This is
6 again the standard and popular measure.

7 At that time, he obtained a full
8 scale IQ of 64, which is well into the retarded
9 range. What was more important to me was the
10 difference between his verbal skills and what we
11 call nonverbal skills on the wechsler Adult
12 Intelligence Scale. There is almost a 25 point
13 split. And that's the type of problems that you
14 see in children who have not just severe learning
15 disabilities but problems in brain function. And,
16 in fact, the psychologist at the time indicated
17 that the "below intellectual functioning is due to
18 organic dysfunction, organic impaired brain
19 function."

20 Q. You mentioned that one of the things
21 that you did in your more recent work in 2004 in
22 evaluating Mr. O'Neal on mental retardation was
23 conduct an interview of Mr. O'Neal. When did that
24 take place?

25 A. December 4, 2004.

1 Q. Where was the interview conducted?

2 A. In the Hamilton County Justice
3 Center.

4 Q. On that occasion, how long were you
5 with James O'Neal?

6 A. Approximately three hours.

7 Q. In connection with the work that you
8 did in 2004 evaluating the issue of whether or not
9 James O'Neal is mentally retarded, did you review
10 the testing that you had performed back in 1994?

11 A. Yes, I did.

12 Q. And back at the time of your 1994
13 work involving Mr. O'Neal, did you prepare a
14 written report at that time?

15 A. Yes.

16 Q. Let me show you what's been marked as
17 Exhibit B, Dr. Tureen, and I'll ask you if you
18 have seen that before?

19 A. Yes.

20 Q. Please tell us what that is.

21 A. It's a copy of my evaluation which
22 was sent to Mr. John Keller, who was the defense
23 lawyer at the time -- one of defense lawyers at
24 the time.

25 Q. Have you had an opportunity to review

1 that report in connection with your more recent
2 2004/2005 work pertaining to Mr. O'Neal?

3 A. Yes. In fact, I was earlier talking
4 about this.

5 Q. Now, back when you interviewed Mr.
6 O'Neal in 2004, what was the reason that you
7 conducted that interview?

8 A. Well, the reason was to actually redo
9 the psychometric testing or IQ testing and see
10 where he was today.

11 Q. Was that interview significant to you
12 in the ultimate formulation of your opinion
13 concerning this issue of whether or not Mr. O'Neal
14 is mentally retarded?

15 A. Yes. And if I can give the reason,
16 is that it's a consistent habit of intellectual
17 performance, which has been established as far
18 back as grade six.

19 Q. As a psychologist, would you ever
20 make a determination that someone was mentally
21 retarded without having conducted an interview of
22 that person.

23 A. It's my policy not to make a
24 diagnosis of any individual without personal
25 contact.

1 Q. Let me show you, Doctor, what has
2 been marked as Exhibit C. Can you tell what that
3 is?

4 A. This is a copy of the report that I
5 sent to the Court as a result of my contact with
6 Mr. O'Neal on December 4th.

7 Q. What's the date of the report, sir?

8 A. January 18, 2005.

9 Q. And would having the report in your
10 hand at this point assist you in giving your
11 testimony?

12 A. Yes.

13 Q. In relation to this issue of mental
14 retardation of James O'Neal, have you reviewed any
15 legal authority?

16 A. Yes, I have.

17 Q. What have you looked at?

18 A. Primarily *Atkins versus Virginia*, a
19 Supreme Court decision handout written by Judge
20 Stevens. There was also an amicus brief that was
21 written for the State of Ohio. There is the
22 statement from the American Mental Retardation
23 Association, which outlines the definitions of
24 mental retardation, which is accepted by *Atkins*
25 and which was supported in the amicus brief.

1 There is also -- there was a report of *Lott versus*
2 *State of Ohio*.

3 Q. I'm sorry?

4 A. *Lott versus Ohio*.

5 Q. Are you aware, Doctor, of any
6 criteria that are utilized in making a
7 determination that a person is mentally retarded?

8 A. The major criteria that I'm aware of
9 is that which is established by the American
10 Mental Retardation Association.

11 Q. If you would, please identify what
12 those criteria are.

13 A. I'm going take this from my report,
14 which is taken from *The Manual of the American*
15 *Mental Retardation*, which is entitled, "Mental
16 Retardation Definition Classification System of
17 Support."

18 Their particular statements are as
19 follows:

20 "The disability characterized by
21 significant limitations both in intellectual
22 functioning and in adaptive behavior as expressed
23 in conceptual, social, and practical adaptive
24 skills and originated before the age of 18."

25 Q. You referenced just a moment ago the

1 American Association for Mental Retardation. What
2 is that, sir?

3 A. It's a nationally known organization
4 of -- it's an advocacy organization. It's a
5 support organization, which has been around
6 since the 1920s and has established many
7 guidelines for working with mental retardation and
8 is nationally recognized.

9 Q. Dr. Tureen, in your experience as a
10 psychologist, have you dealt with the use of these
11 criteria before your work in the case of James
12 O'Neal?

13 A. Yes.

14 Q. When you, as a psychologist, speak of
15 adaptive behavior, what does that refer to?

16 A. -- talking about the ability to
17 adjust to the real world in which we live
18 basically; does one have the skills that are
19 necessary to function academically, to function in
20 the work-related world, to function in the legal
21 world, to function in the social world, to
22 function interpersonally in a manner that is
23 successful and not detrimental to them or to
24 society.

25 Q. You described two tests that you

1 performed in 2004 with Mr. O'Neal, if I recall
2 correctly, the Weschsler and also the Reynolds
3 test?

4 A. Yes.

5 Q. If you would, take us through how
6 the particular tests administered? How are they
7 given to a subject?

8 A. They are administered directly; in
9 this instance by myself. It's a face-to-face
10 administration. That in of itself takes probably
11 close to two hours for the two tests.

12 Q. When you do those tests -- I know
13 there are two -- what do those tests measure?

14 A. They measure essentially -- let me
15 back up. They are broken down into components.
16 The components are compiled into a full scale or
17 composite score. What has been demonstrated that
18 in terms of adaptive functioning, generally
19 speaking, that full scale or composite score is
20 the most significant.

21 In other words, if you look at the
22 Weschsler Adult Intelligence Scale, there are 14
23 subscales, scales that have to do with: How could
24 a person do arithmetic? What is their vocabulary?
25 How well can they do some abstract spatial

1 analysis?

2 Those are all put together to come up
3 with a final score. That's the final score which
4 is used as the best assessment of where an
5 individual is in terms of their general adaptive
6 capacity.

7 Q. How does that comport with the term
8 "full scale IQ"?

9 A. That is the same thing on the
10 Weschsler scale. Other scales call them composite
11 IQs.

12 Q. Let me take you first to the
13 Weschsler and then to the Reynolds. If you would,
14 please tell us or describe what the results of
15 those tests were from 2004 for James O'Neal?

16 A. The full scale IQ on the Weschsler
17 was 67.

18 Q. Did you say "67"?

19 A. Sixty-seven. Now, the qualitative
20 descriptions are a little bit different. You will
21 find that the newer IQ measures do not like to use
22 the term "mental retardation." The older ones do.

23 Technically, they describe him as
24 being that score. "That score" being extremely
25 low. What it is, is that the first percentile of

1 the general population -- that means 99
2 individuals who take the test -- do better than
3 Mr. O'Neal did. Okay.

4 The verbal scale was an IQ of 71,
5 which is at the third percentile. Again, you can
6 get an idea that 97 percent of the people do
7 better.

8 And the performance scale was 69,
9 which is a measure of more perceptual motor,
10 hand/eye coordination and visualization skills.
11 And an important point in looking at these three
12 numbers from any statistical basis is the numbers
13 of 67, 69, and 71 are not significantly different.
14 They all represent very low levels of intellectual
15 functioning.

16 Q. Let me jump from the wechsler to the
17 Reynolds testing. What were the results of that
18 testing that you conducted in 2004?

19 A. The Reynolds breaks down a little bit
20 differently, but still the composite IQ in this
21 case was 63, which again is at the first
22 percentile in this particular case, so we are
23 getting again a measure of functioning at
24 basically the lowest level you can in terms of
25 percentile ranges. That means 99 percent of

1 people function better than this particular
2 individual.

3 The nonverbal index was 67, and the
4 verbal index was 68 -- again, scores which are not
5 significantly different from each other, all low
6 into what we call the extremely low -- or using
7 the old term "retarded" -- range.

8 Q. Who actually scored the Weschsler and
9 Reynolds test that were done of Mr. O'Neal in
10 2004.

11 A. I did.

12 Q. In arriving at the scores that you
13 have described for us, did you attempt to do
14 anything to put Mr. O'Neal's IQ in a particular
15 range?

16 A. No, I handle this the same as I do
17 any other scoring task. I have the manuals in
18 front of me. There are always some answers which
19 may be questionable to try and resolve those
20 questions one way or the other.

21 Q. Can a subject of these tests, the
22 Weschsler and the Reynolds, do something to
23 intentionally try to score badly or have a low
24 score on the testing?

25 A. You mean can they?

1 Q. Yes.

2 A. Yes, they can.

3 Q. And as someone who is administering
4 the tests, is there anything that you do to watch
5 for that or guard against that?

6 A. Well, you get a sense of the effort.
7 But there is a more important measure here of
8 whether or not he tried to do worse, and that's
9 the consistency of performance since age 14.
10 There is no variation here.

11 Q. With regard to the Weschsler Adult
12 Intelligence Scale, the test that you performed on
13 James O'Neal in 2004, is that a test that is well
14 recognized in the psychological community?

15 A. Yes. I think I referred to it as the
16 gold standard of intelligence measure for adults.

17 Q. Dr. Tureen, based upon your
18 education, training, and experience as a
19 psychologist and your interviewing and testing
20 with James O'Neal as well as your review of his
21 school records, have you formed an opinion to a
22 reasonable certainty as a psychologist as to
23 whether or not James O'Neal is mentally retarded
24 and meets the criteria for mental retardation that
25 we have previously talked about?

1 A. Yes, I have.

2 Q. What is your opinion, sir?

3 A. That Mr. O'Neal meets the criteria
4 for mental retardation.

5 Q. What is the basis of that opinion?

6 A. Three bases:

7 One is low IQ scores in the mentally
8 retarded range;

9 Two is the fact that this has
10 occurred before the age of 18, as documented by
11 school records;

12 And three is evidence of impaired
13 brain function that is going to impact his ability
14 to function continually efficiently in social
15 situations, particularly social situations which
16 are stressful.

17 So he is academically impaired. He
18 is socially -- there is a social impairment under
19 specific situations of high stress, and this has
20 occurred before the age of 18.

21 Q. Let me, if I may, break this down to
22 the different prongs or different pieces of the
23 criteria for mental retardation.

24 Based upon your education, training,
25 and experience, and your interview and testing

1 with James O'Neal, as well as your review of his
2 scholastic records, do you have an opinion to a
3 reasonable certainty as a psychologist as to
4 whether or not he suffers from a disability
5 characterized by significantly subaverage
6 intellectual functioning which originated before
7 he was 18 years old?

8 A. Yes.

9 Q. What is your opinion?

10 A. That, in fact, he suffers from a
11 disability originating before the age of 18. It's
12 not only based upon the fact that he was tested at
13 age 14 and demonstrated sublevels of intellectual
14 function, but if you look at the academic records,
15 his performance levels across those records that
16 were available, again, were at the first and
17 second percentile compared to the general
18 population.

19 Q. Based upon your education, training,
20 and experience and your interviewing and testing
21 of Mr. O'Neal, as well as your review of his
22 scholastic records, do you have an opinion, Dr.
23 Tureen, to reasonable certainty as a psychologist
24 as to whether or not Mr. O'Neal currently suffers
25 from a disability characterized by significant